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**[ADDITIONAL COUNSEL ON
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE**

STEPHENSON AWAH TENENG,
MARCEL NGWA, ANKUSH KUMAR,
GURJINDER SINGH, ATINDER PAUL
SINGH, NOE MAURICIO GRANADOS
AQUINO, and all others similarly situated,

Plaintiffs,

v.

DONALD J. TRUMP, President of the
United States,
KIRSTJEN NIELSEN, Secretary
Department of Homeland Security;
RONALD D. VITIELLO, Acting Director,
Immigration and Customs Enforcement;
DAVID MARIN, Field Office Director, Los
Angeles Field Office of Immigration and
Customs Enforcement;
JEFFERSON BEAUREGARD SESSIONS,
III, U.S. Attorney General;
HUGH J. HURWITZ, Acting Director,
Federal Bureau of Prisons,
DAVID SHINN, Warden, FCI Victorville
Medium Security Prison I/II, in their official
capacities only,

Defendants.

Case Number:

5:18-cv-01609-JGB-KK

**DECLARATION OF DAVID
C. FATHI IN SUPPORT OF
PLAINTIFFS' MOTION
FOR CLASS
CERTIFICATION**

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26 Attorneys for Plaintiffs, on *behalf of*
27 *themselves and others similarly situated*
28

1 I, DAVID C. FATHI, DECLARE:

2 1. I am an attorney admitted to practice before the courts of the state of
3 Washington and admitted to practice before this Court *pro hac vice*. I am the
4 Director of the National Prison Project (“NPP”) of the American Civil Liberties
5 Union Foundation (“ACLU”), and am co-lead counsel for the Plaintiffs in this
6 litigation. I make this declaration in support of Plaintiffs’ Motion for Class
7 Certification.

8 2. The ACLU is a nationwide, nonprofit, nonpartisan organization with
9 more than 1.6 million members that is dedicated to defending the principles of
10 liberty and equality embodied in the Constitution and this nation’s civil rights laws.
11 Throughout its almost 100-year history, the ACLU has been deeply involved in
12 protecting the rights of incarcerated people and immigrants.

13 3. The National Prison Project, founded in 1972 as a project of the
14 ACLU, is located in Washington, D.C. It has decades of experience in complex
15 prisoner rights class action suits and has represented prisoners in five cases before
16 the U.S. Supreme Court. Since its founding, the NPP has litigated challenges to
17 conditions of confinement in almost every U.S. state, as well as the District of
18 Columbia and the U.S. Virgin Islands. I have been Director of the NPP since 2010;
19 I have also served as a staff attorney and senior staff attorney at the NPP from 1990
20 to 1993 and 2000 to 2007. From 2007 to 2010, I was Director of the U.S. Program
21 at Human Rights Watch.

22 4. The NPP is one of a handful of offices in the nation that focus on
23 litigating conditions of confinement cases such as this action. Litigating these cases
24 requires specialized knowledge and skills as well as considerable resources. As a
25 result, NPP’s assistance as co-counsel is frequently sought by other attorneys
26 around the nation. Federal courts have repeatedly recognized the special expertise
27 of NPP staff. *See, e.g., Plyler v. Evatt*, 902 F.2d 273, 278 (4th Cir. 1990);
28 *Palmigiano v. Garrahy*, 707 F.2d 636, 637 (1st Cir. 1983); *Duvall v. O'Malley*, No.

1 CV ELH-94-2541, 2016 WL 3523682, at *9 (D. Md. June 28, 2016); *Dockery v.*
 2 *Fischer*, 253 F. Supp. 3d 832, 856 (S.D. Miss. 2015); *Riker v. Gibbons*, No. 3:08-
 3 CV-00115-LRH, 2010 WL 4366012, at *4 (D. Nev. Oct. 28, 2010); *Diaz v. Romer*,
 4 801 F. Supp. 405, 410 (D. Colo. 1992), *aff'd*, 9 F.3d 116 (10th Cir. 1993).

5 5. Class action challenges to conditions of confinement in which NPP has
 6 been class counsel include *Parsons v. Ryan*, 289 F.R.D. 513 (D. Ariz. 2013), *aff'd*,
 7 754 F.3d 657 (9th Cir. 2014) (statewide challenge to conditions in Arizona state
 8 prisons); *Casey v. Lewis*, 834 F. Supp. 1569 (D. Ariz. 1993), 834 F. Supp. 1477 (D.
 9 Ariz. 1993) (same); *Graves v. Arpaio*, 633 F. Supp. 2d 834 (D. Ariz. 2009), *aff'd*,
 10 623 F.3d 1043 (9th Cir. 2010) (challenge to conditions in Maricopa County Jail);
 11 *Gates v. Cook*, 376 F.3d 323, 327 (5th Cir. 2004) (challenge to conditions of
 12 confinement for death-sentenced prisoners); *Flynn v. Doyle*, 2007 WL 805788
 13 (E.D. Wis. Mar. 14, 2007) (challenge to conditions in women's prison); *Inmates of*
 14 *the Rhode Island Training School v. Martinez*, 465 F. Supp. 2d 131 (D.R.I. 2006)
 15 (challenge to conditions in juvenile facility); *Jones 'El v. Berge*, 164 F. Supp. 2d
 16 1096 (W.D. Wis. 2001), 172 F. Supp. 2d 1128 (W.D. Wis. 2001), 374 F.3d 541 (7th
 17 Cir. 2004) (challenge to conditions in "supermax" prison); *Austin v. Pennsylvania*
 18 *Department of Corrections*, 876 F. Supp. 1437 (E.D. Pa. 1995) (statewide challenge
 19 to conditions in Pennsylvania state prisons).

20 6. The Program on Freedom of Religion and Belief (PFRB) is a project
 21 of the national ACLU dedicated to safeguarding the guarantee of religious liberty
 22 embodied in the First Amendment and our nation's civil rights laws. PFRB's
 23 attorneys are experts in religion law, and PFRB litigates a wide variety of religious
 24 liberty cases across the country. PFRB works to ensure that the government neither
 25 promotes religion nor interferes with its free exercise, and among its many cases,
 26 PFRB regularly represents prisoners and detained individuals seeking constitutional
 27 and statutory accommodations for religious exercise. PFRB has represented
 28 prisoners seeking, for example, accommodations for religiously mandated

1 appearance, *see, e.g., Ware v. La. Dep't of Corr.*, 866 F.3d 263 (5th Cir. 2017),
2 *cert. denied*, 138 S. Ct. 1181 (2018); access to religious publications, *see, e.g.,*
3 *Leonard v. Louisiana*, 449 F. App'x 386 (5th Cir. 2011); and the right to preach in
4 prison, *see, e.g., Thompson v. Ricci*, No. 3:08-CV-05926-AET (D.N.J. filed Dec.
5 18, 2008).

6 7. The attorneys of the ACLU are committed to the vigorous, effective,
7 and efficient prosecution of the interests of Plaintiffs and the proposed class (the
8 "Class"), a commitment the ACLU lawyers have demonstrated in their
9 representation of Plaintiffs in the proceedings to date in this matter.

10 8. The ACLU, Prison Law Office, Civil Rights Education and
11 Enforcement Center, and Meyers, Nave, Riback, Silver & Wilson (collectively,
12 "Plaintiffs' counsel") have dedicated many hours and significant financial resources
13 to the investigation and research of Plaintiffs' claims – including interviewing
14 Plaintiffs and other members of the proposed Class to develop the factual record
15 and legal issues underlying this case, interviewing potential expert witnesses,
16 performing legal research about potential claims and relief available to the Class,
17 and drafting a lengthy and detailed complaint as well as this class certification
18 motion.

19 9. The ACLU has dedicated and will continue to commit substantial
20 resources to the representation of the Plaintiffs in this case.

21 10. Plaintiffs' counsel have agreed to act jointly as class counsel, if the
22 Court so designates them.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed this 28th day of August, 2018, at Washington, D.C.

25
26 s/ David C. Fathi
27 David C. Fathi
28 *Attorney for Plaintiffs*